

SERVICE DATE - OCTOBER 24, 1997

SURFACE TRANSPORTATION BOARD

DECISION

No. 41191

WEST TEXAS UTILITIES COMPANY
v.
BURLINGTON NORTHERN RAILROAD COMPANY

Decided: October 17, 1997

In a decision served on May 3, 1996, we found that defendant Burlington Northern Railroad Company (BN) had market dominance over complainant West Texas Utilities Company's (WTU) coal traffic from the Rawhide mine near Gillette, WY, to WTU's Oklaunion generating station in Vernon, TX, and that the rate charged by BN exceeded a maximum reasonable level. BN was ordered to establish within 60 days a new, reduced rate and at the conclusion of judicial review to repay to WTU, with interest, the charges paid for common carrier service to the extent they exceeded the prescribed rate.¹ On May 23, 1997, our decision was affirmed. Burlington N.R.R. v. Surface Transp. Bd., 114 F.3d 206 (D.C. Cir. 1997).

By a petition filed August 20, 1997, pursuant to 49 U.S.C. 11704(b) and (c)(2) and 49 CFR 1133.2 and 1141.1, WTU provides a statement of damages and seeks an order directing immediate payment. BN, while disagreeing with some of WTU's calculations of reparations and interest, states that it is willing to subscribe to the calculations in order to end the dispute. See Exhibit B to the petition.

Because BN does not contest WTU's reparations and interest calculations, we conclude that WTU is entitled to \$11,419,248.08 in reparations plus interest as calculated by WTU through the third quarter of 1997. Interest from October 1, 1997, until the date of payment, should be based on the 91-day Treasury Bill Equivalent yield for the fourth quarter 1997 published by the U.S. Department of the Treasury in the Treasury Bulletin.

It is ordered:

1. Within 30 days after service of this decision, BN shall remit to WTU reparations with interest as determined herein.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹ The reparations period began with the expiration of the rail transportation contract under which the traffic formerly moved and ended with BN's establishment of a reasonable rate. The interest period extends until the final payment of reparations.